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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5365 OF 2005

K.C.G. Varghese ... Petitioner
V/s.
M/s.Shah Brothers ... Respondents

Mr.P.N. Karlekar for Petitioner
Mr.R.A. Thorat for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 18, 2005**

P.C.:

. The Petition challenges the concurrent findings of fact of both the Courts below. The plaintiffs had filed a suit for ejectment on the grounds of change of user of the suit premises, default in payment of rent, bonafide requirement and keeping the premises unused without reasonable cause for six months preceding the filing of suit. In paragraph 6 of the written statement, the defendant has stated that the plaintiffs were aware of the fact that the defendant was using the suit premises for business purposes only and since they knew this fact they had condoned the situation. Therefore, the defendant i.e., the Petitioner herein, has admitted to using the premises for business purposes.

2. The suit has been decreed on the ground of change of user. The appellate Court has decreed the suit not only on the ground of change of user but also

on the ground that the suit premises were not used for the purpose for which they were let out for six months preceding the date of filing of the suit. In these circumstances, the suit has been decreed.

3. The learned Advocate appearing of the Petitioner submits that the Petitioner's employees were residing in the suit premises and therefore, there is no question of the Petitioner having changed the user of the suit premises. He relies on the judgment of the Apex Court in the case of *Sachindra Nath Shah v/s. Santosh Kumar,* **AIR 1987 SC 409** where the Apex Court has found that the tenant who takes a person as paying guest, does not change the user of the suit premises for the purpose for which they were let.

4. There is no dispute that the written statement clearly mentions that the suit premises are being used for the purpose of business. There is no pleading in the written statement that the suit premises were used by the employees of the Petitioner to reside. No amount of evidence in defence on this count is admissible if the pleadings laying the foundation are absent. The agreement entered into between the Petitioner and the Respondents specifically provides that the premises were let out for the purpose of residence. The term

residence must be construed as the Petitioner's own residence and cannot mean for the purpose of housing his employees. In the case of *Bright Brothers (Private) Ltd. v/s. Venkatlal G. Pittie & Ors.*, **1980 (2) ALL INDIA RENT CONTROL JOURNAL (Bom.) 533,** the Division Bench of this Court held that non-user of the suit premises as per the leave and licence agreement would indicate that there is breach of the same and would be liable for ejectment. In the case of *V.Rahimbhai Haji v/s. V. Sunderlal*, **AIR 1986 SC 174** decided by the Apex Court, it has been held that where a tenant was in possession of a plot of land he could not construct a structure in that land and contend that he was using the property or the suit premises being a tenant. Similarly in the present case "residence" would mean that of the tenant. Therefore, the submission of the learned advocate for the Petitioner is without merit.

5. In my view, no case has been made out for interference with the concurrent findings of fact arrived at by the Courts below. Petition is, therefore, rejected.

6. At the request of the learned Advocate for the Petitioner, time to vacate the suit premises is granted upto 30.9.2006 on condition that the Petitioner and all

those who are residing in the suit premises furnish an undertaking in the usual terms within two weeks from today.